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SENATE

REPORT
102-218

AMENDING THE STOCK RAISING HOMESTEAD ACT TO PROVIDE CERTAIN PROCEDURES FOR ENTRY ONTO STOCK RAISING HOMESTEAD ACT LANDS, AND FOR OTHER PURPOSES

NOVEMBER 15 (legislative day, NOVEMBER 13), 1991.—Ordered to be printed

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Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1187]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1187) to amend the Stock Raising Homestead Act to provide certain procedures for entry onto Stock Raising Homestead Act lands, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 4, lines 4, 6, and 8, delete "(A)", "(B)", and "(C)" and insert in lieu thereof "(i)", "(ii)", and "(iii)".

2. On page 7, line 1, delete "(S)" and insert in lieu thereof "(A)".

3. On page 7, line 8, and on page 8, line 11, insert after the word "surface" the following: "in accordance with the standards set forth in the last sentence of Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)) and the regulations promulgated thereunder,".

4. On page 9, lines 14 through 21, delete the two sentences starting with "The Secretary shall," and ending with "such time is necessary to make the determination" and insert in lieu thereof the following: "The Secretary shall within sixty days of receipt of the plan, approve such plan, if it complies with the requirements of this subparagraph or notify the person submitting the plan of any changes required to bring such plan into compliance with the requirements of this subparagraph. If the person submitting the plan agrees to the changes or to modifications acceptable to the Secretary, the Secretary shall approve the plan as changed. If no agreement can be reached on changes which, in the opinion of the Secretary, will bring the plan into compliance with the requirements of

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this subparagraph, then the Secretary shall disapprove the plan and notify both the surface owner and the person submitting the plan of the decision. The sixty day period shall be extended where additional time is required to comply with other requirements of law.".

5. On page 10, line 11, add a colon after "results".

Purpose of the Measure

S. 1187, as reported by the Committee, provides additional procedures for entry for mining purposes onto lands patented under the Stock Raising Homestead Act. S. 1187 provides for a balance between the needs of those interested in mining the Federal mineral estate and the surface owner.

Background and Need

In 1916, Congress passed the Stock Raising Homestead Act (SRHA) (43 U.S.C. 299), which made available unappropriated public lands for stock raising homestead entries. Patents issued pursuant to SRHA reserved to the United States the mineral estate.

Approximately 70 million acres of land were patented under SRHA prior to repel of the entry provision in 1976. The Bureau of Land Management (BLM) estimates that there are roughly 35,000 unpatented mining claims presently recorded on SRHA lands. BLM has provided an estimate of the status of mining operations on SRHA lands by State:

State	SRHA land (acres)	Mining claims (acres)	Number of operations	Number of bonds	Bond amount
Arizona	2,985,746	±7,000	18	18	$481,500
California	3,423,222	±3,000	7	7	21,000
Colorado	8,405,015	±3,000	6	6	15,000
Idaho	3,563,294	±1,500	0	0	
Montana, North Dakota, South Dakota	10,741,052	±1,500	3	0	
Nevada	494,637	±2,000	0	0	
New Mexico, Oklahoma, Kansas	13,751,047	±6,500	0	0	
Oregon, Washington	3,889,434	±1,500	2	0	
Utah	2,800,709	±6,000	0	0	
Wyoming, Nebraska	18,281,026	±3,000	20	0	
Other	27,743				
Total	70,362,925	±35,000	56	31	517,500

Current law provides for entry onto stock raising homestead lands for prospecting, states that permanent improvements shall not be damaged, and provides for liability and compensation to the surface owner for damages to crops.

Under current law, any person may occupy so much of the surface of stock raising homestead lands as required for all purposes reasonably incident to mining, upon securing the surface owner's written consent or a waiver, or, by agreement, upon payment of damages to crops or other tangible improvements. In lieu of either of the preceding provisions, the miner may execute a bond to the United States to secure payment of such damages.

Conflicts can arise on these lands between those interested in exploring for and developing the Federal mineral estate, and surface owners angered in raising livestock. The Subcommittee received testimony that, as allowed by current law, miners in some instances enter ranchers without prior notice and engage in mining activity which can seriously damage the surface, destroy forage, and adversely affect the quality and quantity of water available to livestock. Income losses and reclamation costs for a rancher can be substantial, and disruption of an operation in only one year can threaten the overall profitability and continued viability of a ranching operation. Ranchers testified that provisions requiring: prior notice to surface owners of intent to begin mining or prospecting, a bond to insure a means of reclamation and financial compensation for damage or income loss, and a plan of operations to allow the surface owner to be aware of and participate in determining how the land will be used, will maintain the right of miners while respecting the needs of the surface owner.

Legislative History

S. 1187 was introduced by Senators Bingaman and Wallop on May 24, 1991. A hearing was held on July 30, 1991.

Legislation similar to S. 1187 (S. 1908) was introduced in the 101st Congress, and a hearing held on March 9, 1990.

Committee Recommendations and Tabulation of Vote

The Senate Committee on Energy and Natural Resources, in open business session on Wednesday, October 30, 1991, by unanimous vote of a quorum present, recommended that the Senate pass the bill as described herein.

The rollcall vote on reporting the measure was 20 yeas and 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford [1]	
Mr. Bradley [1]	
Mr. Bingaman	
Mr. Wirth	
Mr. Conrad	
Mr. Akaka [1]	
Mr. Fowler [1]	
Mr. Shelby [1]	
Mr. Wellstone [1]	
Mr. Wallop	
Mr. Hatfield	
Mr. Domenici	
Mr. Murkowski	
Mr. Nickles [1]	
Mr. Burns	
Mr. Craig	
Mr. Seymour [1]	
Mr. Garn	

[1] Indicates proxy vote.

COMMITTEE AMENDMENTS

1. The first amendment corrects a technical drafting error.
2. The second amendment corrects a printing error.
3. The third amendment establishes that the reclamation required by the legislation is in accordance with the standard of prevention of unnecessary or undue degradation of the lands, as set out in the Federal Land Policy and Management Act (FLPMA).
4. The fourth amendment allows the person submitting a plan of operation an opportunity to change the plan to bring it into compliance. The amendment also changes the time period established in the bill for approval of a plan of operation to allow for compliance with other requirements of law.
5. The fifth amendment corrects a printing error.

SECTION-BY-SECTION ANALYSIS

Subsection 1(a) would add new subsections (b) and (c) to the Stock Raising Homestead Act.

New paragraph (b)(1) of the Act states that notwithstanding subsection (a), no person other than the surface owner may enter lands subject to the Act to prospect for minerals or to locate a claim under the mining laws without filing a notice of intention to locate a claim pursuant to paragraph (2), and providing notice to the surface owner pursuant to paragraph (3). Any person who has complied with the specific requirements may, during the authorized prospecting period, enter lands to prospect for minerals, with minimal surface disruption, and to locate a mining claim on such lands. During such period no such person may construct any road, use any explosives, or use any mechanical earth moving equipment. New paragraph (b)(1) defines "authorized prospecting period" to mean the period beginning 10 days after notice is provided under paragraph (3) and ending with the expiration of the 60-day period, pursuant to paragraph (2).

New paragraph (b)(2) provides that any person seeking to prospect for minerals or to locate a mining claim shall file with the Secretary of the Interior a notice of intention to locate a claim. Whenever any person has filed such notice, during the 60-day period following the date of such filing, or extension thereof pursuant to the paragraph, no other person (including the surface owner) may file such a notice with respect to any portion of such lands; prospect for minerals or locate a mining claim on any portion of such lands; or file an application to acquire any interest in such lands pursuant to section 209 of FLPMA. If, within such 60-day period, the person who filed a notice files a plan of operation with the Secretary, such 60-day period shall be extended until the approval or disapproval of the plan of operations. The Secretary may establish such fees as may be necessary to cover the administrative costs of processing notices filed under this paragraph.

New paragraph (b)(3) provides that any person who has filed a notice of intention to locate a claim shall provide written notice by registered or certified mail to the surface owner of the lands. The

notice shall be provided at least 10 days before entering the lands. The rest of subsection (b)(3) is self-explanatory.

New paragraph (b)(4) is self-explanatory.

New paragraph (b)(5) is self-explanatory.

New paragraph (c)(1) provides that, notwithstanding subsection (a), except for prospecting in accordance with subsection (b), no person may conduct any mineral exploration, development, or production activities without the written consent of the surface owner unless the Secretary has authorized the conduct of such activities under paragraph (2).

New paragraph (c)(2) provides that the Secretary shall authorize, if the conditions of the paragraph are met, a person to conduct such mineral exploration, development, and production activities on lands subject to the Act without the consent of the surface owner.

New subparagraph (c)(2)(A) states that before the Secretary may authorize any person to conduct such mineral activities, the Secretary shall require such person to post a surety bond or other type of financial guarantee satisfactory to the Secretary to insure (1) reclamation of the surface in accordance with the standards set forth in the last sentence of section 302(b) of FLPMA and the regulations promulgated thereunder, (2) payment to the surface owner as compensation for any postmining, permanent damages to crops and tangible improvements of the surface owner, and (3) compensation for any post mining, permanent loss of income due to loss or impairment of grazing, or other uses of the land by the surface owner, to the extent that reclamation required by the plan of operations would not permit such uses to continue at the level existing prior to the mineral activities. In determining the bond amount to cover permanent loss of income, the Secretary shall consider, where appropriate, the potential loss of value due to the estimated permanent reduction in utilization of the land as expressed in Animal Unit Months.

New subparagraph (c)(2)(B) states that before the Secretary may authorize any person to conduct such mineral activities, the Secretary shall require the submittal of a plan of operations satisfactory to the Secretary and which complies with the requirements of the subparagraph. The plan shall contain such terms and conditions as the Secretary determines necessary, including, at a minimum procedures for reclamation of the surface in accordance with the standards set forth in the last sentence of section 302(b) of FLPMA and the regulations promulgated thereunder, minimization of damages to crops and tangible improvements of the surface owner, and minimization of disruption to grazing or other uses of the land by the surface owner. The plan shall provide for payment of a fee for the use of the surface lands during exploration, development, production and reclamation activities. The fee shall be paid to the surface owner by the person submitting the plan of operations. The Secretary shall established the surface use fee, taking into account the acreage involved and the degree of potential disruption to existing surface uses (including loss of income to the surface owner due to the loss of impairment of existing surface uses for the during of the mineral activities), but the surface use fee shall not exceed the fair market value for the surface of the land. Upon receipt of the

plan, the Secretary shall provide a copy of the plan to the surface owner. The surface owner may submit comments and recommend plan modifications to the Secretary within thirty days of the surface owner's receipt of the plan. The Secretary shall within sixty days of receipt of the plan, approve such plan, if it complies with the requirements of the subparagraph or notify the person submitting the plan of any changes required to bring such plan into compliance. If the person submitting the plan agrees to the changes or to modifications acceptable to the Secretary, the Secretary shall approve the plan as changed. If no agreement can be reached, the Secretary shall disapprove the plan and notify both the surface owner and the person submitting the plan of the decision. The sixty day period shall be extended where addition time is required to comply with other requirements of law. The rest of the subparagraph is self-explanatory.

New paragraph (c)(3) provides whenever the surface owner has suffered any damages or loss referred to in subparagraph (c)(2)(A), if such damage or loss results from any mineral activities undertaken without the consent of the surface owner or an authorization by the Secretary, or from the failure to remedy to the satisfaction of the Secretary any substantial noncompliance with the terms and conditions of a plan under subparagraph (2)(B), and after notice, the surface owner may bring an action in the appropriate United States district court for, and the court may award, double damages plus costs for willful misconduct or gross negligence. The rest of the subparagraph is self-explanatory.

New paragraph (c)(4) provides that the surface owner may petition the Secretary for payment of all or any portion of a surety bond or other financial guarantee as compensation for damages and losses pursuant to paragraph 2(A). Pursuant to such a petition, the Secretary may use such bond or other guarantee to provide compensation to the surface owner for such damages and to insure reclamation as required by the subsection.

New paragraph (c)(5) states that the Secretary shall release the surety bond or other financial guarantee required under paragraph (2)(A) upon the successful completion of all requirements or at such earlier date as may be agreed to by the surface owner.

New paragraph (c)(6) is self-explanatory.

Subsection (b) provides that within 180 days after enactment, the Secretary shall determine what actions may be necessary to simplify the procedures established pursuant to section 209 of FLPMA for conveyance of the mineral interest in such land owned by the United States. If the Secretary determines that no action is necessary, the Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the United States House of Representatives of such determination, along with the reasons for such determination.

Subsection (c) is self-explanatory.

Subsection (d) is self-explanatory.

Cost and Regulatory Considerations

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 7, 1991.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1187, a bill to amend the Stock Raising Homestead Act to provide certain procedures for entry onto Stock Raising Homestead Act lands, and for other purposes. The bill was ordered reported by the Senate Committee on Energy and Natural Resources on October 30, 1991. We estimate that enactment of this bill would result in additional costs to the federal government totaling about $0.5 million annually, assuming appropriation of the necessary funds. Enactment of S. 1187 would affect direct spending, by authorizing the Bureau of Land Management (BLM) to collect fees to cover certain administrative costs, and thus would be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985. We expect that these fee collections would be negligible, however.

Over the last 70 years, as a result of the Stock Raising Homestead Act of 1916, ownership of more than 70 million acres of public land in the western United States has been transferred to private citizens for grazing livestock. The federal government kept the rights to all subsurface minerals on these lands. Under current law, prospectors holding hard rock mining claims on these lands do not have to notify the Bureau of Land Management (BLM), obtain the consent of the surface land owner, or post bonds to insure against damage before prospecting, exploring, or mining.

S. 1187 would require a claim-holder conducting activities under the Mining Law of 1872 to notify the surface owner and BLM of proposed prospecting activities. BLM would be authorized to establish fees to cover the administrative costs associated with processing these notices. The bill also would require the claim-holder to obtain the surface owner's consent before conducting mineral exploration or development activities. If the surface owner's consent cannot be obtained, authorization to explore and develop could be obtained by filing an operating plan with the BLM and posting a bond or other financial guarantee to cover potential damages from mining activities.

BLM estimates that there are about 17,000 active mining claims on the affected land. Currently, the Bureau does not monitor or regulate activities on the 70 million acres affected by this bill. Based on information from BLM, we estimate that enactment of S. 1187 would require new monitoring, recordkeeping, and regulatory activities. Assuming funds are provided in future appropriation bills, we estimate that these new activities would cost about $0.5 million annually. We do not expect fee collections to be significant.

Enactment of this bill would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in implementing S. 1187. The bill is not a regulatory measure in the sense of imposing significant Government-established standards or imposing major economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1187 as amended.

EXECUTIVE COMMUNICATIONS

On July 17, 1991, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on S. 1187. These reports had not been received at the time this report was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate.

Following is the Department of the Interior's statement at the July 30, 1991, hearing:

STATEMENT OF HILLARY A. ODEN, ASSISTANT DIRECTOR, ENERGY AND MINERAL RESOURCES, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to appear here today to give you our views on S. 1187, a proposal aimed at bringing about closer coordination between locatable mineral development activities and surface use on lands patented under the Stock Raising Homestead Act.

The Bureau of Land Management supports the bill, with some recommendations for amendment which I will outline.

In managing the public lands, including the reserved Federal mineral estate, the BLM strives to be a good neighbor to those who own land adjacent to the public lands, as well as those who own the surface lands over the Federal mineral estate. The mining industry likewise has an obligations to be good neighbors to surface landowners and managers of the public mineral estate. In this respect, it only makes good sense that potential prospectors and mining claimants of land acquired under the Stock Raising Homestead Act develop a closer report and accountability

with surface owners, so there will not be any surprises or misunderstanding as mineral exploration or development progresses.

We support the concepts and approach in the bill whereby the onus for reaching agreement on mineral development remains with the interested parties and the Secretary of the Interior could step in only when agreement cannot be reached. We appreciate the efforts of the Committee to accommodate our views, as expressed in previous testimony on similar bills, and believe S. 1187 provides a more workable framework for the few remaining refinements we recommend.

Our concerns relate to four principal areas:

(1) PERIOD FOR PROSPECTING AND ASSESSMENT WORK

New subsection 9(b)(1) would provide, in part, that only prospecting activities causing mineral surface disturbance would be permitted after the filing of a notice of intention to locate a claim and surface owner notification. It specifies types of activities that are not permitted.

The bill does not provide for any activities to take place after this reconnaissance exploration, in the absence of surface owner consent, until approval of a plan of operations. Filing a plan of operations with the Secretary during the 60 day prospecting period in effect extends the period during which no one else may prospect. Although this provision of the bill does protect the prospector from intervening claims pending the Secretary's decision on the plan of operations, a miner may be unable to perform work necessary to comply with the annual assessment requirements of the Mining Law of 1872 and of the Federal Land Policy and Management Act of 1976 (FLPMA).

To address this issue, the bill should be amended to authorize the payment of a $100 annual holding fee in lieu of the assessment requirement in the Mining Law. The President's 1992 Budget proposes such a change for all Federal Mining Claims, for all Federal mining claims and we strongly support it.

It is our understanding that violation of the prohibitions against activity by other prospecters during the 60-day period, potentially resulting in rival claims, would be resolved by the courts as is now the case for rival claims under existing law.

(2) TIMEFRAME FOR APPROVING OR DISAPPROVING A PLAN OF OPERATIONS

Under new section 9(c) the surface owner would have 30 days to comment on a plan of operations submitted to the Secretary. The Secretary would have 60 days to review the plan, but could extend the period another 60 days if he determines that it is necessary. In some cases 120 days would not be sufficient time to complete the evaluation process now applicable to approval of a plan of operations under

other existing laws. These requirements involve environmental impact analysis pursuant to the National Environmental Policy Act, compliance with the Endangered Species Act and the Historic Preservation Act, and consultation and coordination with other agencies.

Approval of a plan of operations under S. 1187 would likewise be subject to these statutory mandates. The time limitations for a decision on a plan should realistically reflect these requirements. This could be accomplished by deleting the time limits in the bill and requiring that the regulations set forth timeframes. Another option would be to retain the initial 60-day period and provide for such extension as the Secretary determines, on a case by case basis, to be necessary to comply with other applicable statutory requirements.

(3) BONDING

New subsection 9(c)(2)(A), denoted as "(S)" in the bill, requires a bond, or other type of financial guarantee, before the Secretary authorizes mineral exploration or development activities. The bond is based on reclamation costs, post-mining, permanent damages to crops or tangible improvements of the surface owner, and post-mining, permanent loss of income by the surface owner. In determining loss of income, permanent reduction in "animal unit months" (AUM) must be considered where appropriate.

Post-mining permanent loss of income by the surface owner due to loss or impairment of existing grazing or other uses is so open-ended that it would be extremely difficult for the Secretary to determine. Further, under subsection 9(c)(3), the surface owner may bring action in the United States district court for double damages for loss of income where there was willful misconduct or gross negligence. We favor the provision for a court remedy. Because this other remedy exists, we suggest dropping or further limiting the loss of income calculation as part of the bond amount.

(4) CONVEYANCE OF FEDERAL MINERAL INTERESTS

Subsection 1(b) of S. 1187 requires the Secretary to determine within 180 days any actions needed to simplify conveyance of Federal mineral interests pursuant to Section 209 of FLPMA. If the Secretary finds that no action is needed, then he must so notify appropriate Committees of Congress and provide reasons for his conclusion.

We do not see the need for subsection 1(b).

Our regulations in 43 CFR 2720 were adopted to provide for such conveyances while assuring protection of the public interest, after opportunity for public comment. As with all of our regulations, they are subject to a periodic review and reevaluation process and will be reexamined within this framework, without additional legislative guidance.

TECHNICAL AMENDMENT

We recommend that subsection "(A)", "(B)", and "(C)" in lines 4–8 of page 4 be renumbered "(i)", "(ii)", and "(iii)" for clarity.

S. 1187 has no pay-as-you-go (PAYGO) impacts.

Thank you for the chance to present our recommendations. This concludes my statement. I will be happy to answer questions.

SUMMARY OF S. 1187

Section 1(a) amends Section 9 of the "Stock Raising Homestead Act" to add new subsections for surface owner consent and payment of a fee to the surface owner for hardrock mineral development of Stock Raising Homestead Lands, subject to a plan of operations.

New subsection (b) provides that:

No one other than a surface owner may enter the lands to prospect or locate a claim without filing a notice of intention to locate a claim with the Secretary of the Interior (Secretary) and providing notice to the surface owner;

Ten days after complying with the notice required, a prospector may enter the lands to prospect with minimal surface disruption and locate a claim;

This prospecting period expires 60 days from the date of filing a notice with the Secretary, subject to extension as set forth in the bill;

Filing of the notice with the Secretary prevents any other person from (1) filing a notice with respect to the same lands; (2) prospecting or locating a claim on these lands; or (3) applying for conveyance of mineral interests under the Federal Land Policy and Management Act (FLPMA);

This protection of the filer is initiated by the filing of notice with the Secretary and lasts 60 days, or until a plan of operations (submitted by him to the Secretary within that 60 days) is approved or disapproved by the Secretary;

The Secretary may establish processing fees for the notices;

Anyone who has filed a notice with the Secretary must provide written notice to the surface owner 10 days before entering the lands; and

Acreage that can be covered by the notices by any person is limited to 6,400 acres in any State and 1,280 acres for a single surface owner.

New subsection (c) provides that:

Except for prospecting pursuant to new subsection (b), in the absence of written surface owner consent, a person may undertake mineral exploration, development or production activities, only if authorized by the Secretary pursuant to an approved plan of operations

and after posting a satisfactory surety bond and paying a surface use fee;

The Secretary must authorize mineral activities to take place (even without the consent of the surface owner) if these conditions are met by the applicant (approved plan of operations, posting of bond, payment of a surface use fee);

The bond, to be held by the United States, must ensure (1) reclamation of the surface, (2) payment to the surface owner for post-mining permanent damages to crops and improvements, and (3) compensation for post-mining, permanent loss of income due to impairment of grazing or other uses, considering potential loss due to permanent reduction in animal units months;

The plan of operations must contain satisfactory procedures for (1) surface reclamation, (2) minimizing damages to crops and improvements and (3) minimizing disruption of grazing or other uses;

The plan of operations must provide for payments of a surface use fee in advance to the surface owner for use during mineral activities, including the reclamation period;

The surface use fee is to be established by the Secretary, based on acreage involved, and potential disruption to existing surfaces use;

The surface use fee cannot exceed fair market value of the land;

The Secretary must provide a copy of the proposed plan of operations to the surface owner and the surface owner may submit comments and recommendations thereon within 30 days of his receipt of it from the Secretary;

The Secretary has 60 days to determine if the plan complies with the requirements and to approve or disapprove it;

The 60-day period can be extended for another 60 days if the Secretary determines that additional time is necessary; and

Authorization to conduct mineral activities under a plan must be suspended or revoked by the Secretary, if he determines that the miner is in substantial noncompliance with the plan and failed to remedy the problems within a reasonable time.

New subsection (c) also authorizes payment of damages for certain losses and provides that:

The surface owner may bring an action against the person conducting mineral activities in the appropriate U.S. district court for damages or loss resulting from mineral activities undertaken without consent of the surface owner or authorization of the Secretary (in absence of surface owner consent) or failure of the person conducting mineral activities to remedy substantial noncompliance with plan;

The court may award double damages plus costs for willfull misconduct or gross negligence;

Damages shall be reduced by any compensation the surface owner has received or is eligible to receive pursuant to the bond; and

Double damages plus costs may also be awarded for willful misconduct or gross negligence against any person conducting prospecting activities in violation of the notice requirements set forth in the bill.

Section 1(b) directs the Secretary to determine (within 180 days) actions needed to simplify procedures for conveyance of Federal reserved mineral interests under Section 209 of FLPMA and to notify Committees of Congress of a determination that no changes are needed (if that is his conclusion), along with the reasons for that determination.

Section 1(c) contains a technical conforming amendment.

Section 1(d) requires the Secretary to promulgate implementing regulations within 1 year.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1187, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, exiting law in which no change is proposed is shown in roman):

AN ACT To provide for stock-raising homestead, and for other purposes

(a) General Provisions.—All entries made and patents issued under the provisions of this Act shall be subject to and contain a reservation to the United States of all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same. The coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal. Any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered or patented, as provided by this subchapter, for the purpose of prospecting for coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee, and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on such lands by reason of such protecting. Any person who has acquired from the United States the coal or other mineral deposits in any such land, or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; second, upon payment of the damages to crops or other tangible improvements to the owner thereof, where agreement may be had

as to the amount thereof; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure the payment of such damages to the crops or tangible improvements of the entryman or owner, as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon, such bond or undertaking to be in form and in accordance with rules and regulations prescribed by the Secretary of the Interior and to be filed with and approved by the officer designated by the Secretary of the Interior of the local land office of the district wherein the land is situate, subject to appeal to the Secretary of the Interior or such officer as he may designate: *Provided*, That all patents issued for the coal or other mineral deposits herein reserved shall contain appropriate notations declaring them to be subject to the provisions of this subchapter with reference to the disposition, occupancy, and use of the land as permitted to an entryman under this subchapter.

(b) PROSPECTING; NOTICE OF INTENTION TO LOCATE; EXPLORATION, DEVELOPMENT, AND PRODUCTION.—

(1) PROSPECTING; LOCATION OF CLAIMS.—Notwithstanding subsection (a), no person other than the surface owner may enter lands subject to this Act to prospect for minerals or to locate a claim under the mining laws of the United States on such lands without:

(A) filing a notice of intention to locate a claim pursuant to paragraph (2); and

(B) providing notice to the surface owner pursuant to paragraph (3).

Any person who has complied with paragraphs (2) and (3) with respect to any such lands may, during the authorized prospecting period, enter such lands to prospect for minerals, with minimal surface disruption, and to locate a mining claim on such lands. During such period no such person may construct any road, use any explosives, or use any mechanical earth moving equipment on such lands. With respect to any lands for which a notice is filed under paragraph (2), the term "authorized prospecting period" means the period beginning ten days after notice is provided under paragraph (3) with respect to such lands and ending with the expiration of the sixty-day period, or the extension of such period, pursuant to paragraph (2).

(2) NOTICE OF INTENTION TO LOCATE A CLAIM.—

(A) any person seeking to prospect for minerals or to locate a mining claim on lands subject to this Act shall file with the Secretary of the Interior a notice of intention to locate a claim on the lands concerned. The notice shall be in such form as the Secretary of the Interior shall prescribe. The notice shall contain the name and mailing address of the person filing the notice and a legal description of the lands to which the notice applies. The legal description shall be based on the public land survey or on such other description as is sufficient to permit the Secretary to record the notice on the Secretary's land status records. Whenever any person has filed a notice under this paragraph with re-

spect to any lands, during the sixty-day period following the date of such filing, or any extension thereof pursuant to this paragraph, no other person (including the surface owner) may—

(i) file such a notice with respect to any portion of such lands;

(ii) prospect for minerals or locate a mining claim on any portion of such lands; or

(iii) file an application to acquire any interest in any portion of such lands pursuant to section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719). If, within such sixty-day period, the person who filed a notice under this paragraph files a plan of operations with the Secretary pursuant to subsection (c) of this section, such sixty-day period shall be extended until the approval or disapproval of the plan of operations by the Secretary pursuant to subsection (c) of this section.

(B) The Secretary may establish such fees as may be necessary to cover the administrative costs of processing notices filed under this paragraph.

(3) NOTICE TO SURFACE OWNER.—Any person who has filed a notice of intention to locate a claim under paragraph (2) for any lands subject to this Act shall provide written notice by registered or certified mail to the surface owner (as evidenced by local tax records) of the lands covered by the notice under paragraph (2). The notice shall be provided at least ten days before entering such lands and shall contain each of the following—

(A) A brief description of the proposed prospecting activities.

(B) A map and legal description of the lands to be subject to prospecting.

(C) The name, address, and phone number of the person managing such activities.

(D) A statement of the dates on which such activities shall take place.

(4) ACREAGE LIMITATIONS.—The total acreage covered at any time by notices of intention to locate a claim under paragraph (2) filed by any person and by affiliates of such person may not exceed six thousand four hundred acres of lands subject to this Act in any one State and one thousand two hundred and eighty acres of such lands for a single surface owner. For purposes of this paragraph, the term "affiliate" means, with respect to any person, any other person which controls, is controlled by, or is under common control with, such person.

(5) MINERALS COVERED.—This subsection applies only to minerals not subject to dispcsition under the Mineral Leasing Act (30 U.S.C. 181 and following), the Geothermal Steam Act of 1970 (30 U.S.C. 100 and following), or the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following).

(c) MINERAL EXPLORATION, DEVELOPMENT AND PRODUCTION.—

(1) IN GENERAL.—Notwithstanding subsection (a) of this section, except for prospecting in accordance with subsection (b) of

this section, no person may conduct any mineral exploration, development, or production activities on lands subject to this Act without the written consent of the surface owner thereof unless the Secretary has authorized the conduct of such activities under paragraph (2).

(2) AUTHORIZED MINING OPERATIONS.—The Secretary shall authorize, if the conditions of this paragraph are met, a person to conduct mineral exploration, development, and production activities on lands subject to this Act without the consent of the surface owner thereof. Such conditions for authorization are—

(A) BOND.—Before the Secretary may authorize any person to conduct mineral exploration, development, or production activities, the Secretary shall require such person to post a surety bond to be held by the United States, or to provide such other type of financial guarantee satisfactory to the Secretary to insure (i) reclamation of the surface in accordance with the standards set forth in the last sentence of Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)) and the regulations promulgated thereunder, (ii) payment to the surface owner as compensation for any postmining, permanent damages to crops and tangible improvements of the surface owner, and (iii) compensation for any postmining, permanent loss of income by the surface owner due to loss or impairment of grazing, or other uses of the land by the surface owner, to the extent that reclamation required by the plan of operations would not permit such uses to continue at the level existing prior to the mineral exploration, development, and production activities. In determining the bond amount to cover permanent loss of income, the Secretary shall consider, where appropriate, the potential loss of value due to the estimated permanent reduction in utilization of the land as expressed in Animal Unit Months.

(B) PLAN OF OPERATIONS.—Before the Secretary may authorize any person to conduct mineral exploration, development, or production activities, the Secretary shall require such person to submit a plan of operations satisfactory to the Secretary and which complies with this subparagraph. The plan shall contain such terms and conditions as the Secretary determines necessary. The conditions shall include at a minimum, procedures for (i) reclamation of the surface in accordance with the standards set forth in the last sentence of Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)) and the regulations promulgated thereunder, (ii) minimization of damages to crops and tangible improvements of the surface owner, and (iii) minimization of disrupting to grazing or other uses of the land by the surface owner. The plan shall provide for payment of a fee for the use of the surface lands during exploration, development, production and reclamation activities. The fee shall be paid to the surface owner by the person submitting the plan of operations. The fee shall be paid in advance of any mineral exploration, development, or production activities or at such other time or times

as may be agreed to by the surface owner and the person conducting such activities. The Secretary shall establish the surface use fee, taking into account the acreage involved and the degree of potential disruption to existing surface uses (including loss of income to the surface owner due to the loss or impairment of existing surface uses for the duration of the mineral exploration, development, and production activities), but the surface use fee shall not exceed the fair market value for the surface of the land. Upon receipt of the plan, the Secretary shall provide a copy of the plan to the surface owner. The surface owner may submit comments and recommend plan modifications to the Secretary within thirty days of the surface owner's receipt of the plan. The Secretary shall within sixty days of receipt of the plan, approve such plan, if it complies with the requirements of this subparagraph or notify the person submitting the plan of any changes required to bring such plan into compliance with the requirements of this subparagraph. If the person submitting the plan agrees to the changes or to modifications acceptable to the Secretary, the Secretary shall approve the plan as changed. If no agreement can be reached on changes which, in the opinion of the Secretary, will bring the plan into compliance with the requirements of this subparagraph, then the Secretary shall disapprove the plan and notify both the surface owner and the person submitting the plan of the decision. The sixty day period shall be extended where additional time is required to comply with other requirements of law. The Secretary shall suspend or revoke the authorization under this paragraph whenever the Secretary determines, on the Secretary's own motion or on a motion made by the surface owner, that the person conducting mineral exploration, development, or production activities is in substantial noncompliance with the terms and conditions of the plan and failed to remedy the violation after notice from the Secretary within the time required by the Secretary.

(3) DAMAGES FOR FAILURE TO COMPLY.—Whenever the surface owner of any kind subject to this Act has suffered any damages of loss referred to in paragraph (2)(A), if such damages or loss results—

(A) from any mineral exploration, development, or production activities undertaken without the consent of the surface owner under paragraph (1) or an authorization by the Secretary under paragraph (2), or

(B) from the failure of the person conducting mineral exploration, development, or production activities to remedy to the satisfaction of the Secretary any substantial noncompliance with the terms and conditions of a plan under paragraph (2)(B) pursuant to a notice from the Secretary under the last sentence of paragraph (2), the surface owner may bring an action against the person conducting mineral exploration, development, production or reclamation activities in the appropriate United States district court for, and the court may award, double damages plus costs for willful

misconduct or gross negligence. Such damages shall be reduced by the amount of any compensation which the surface owner has received, or is eligible to receive, pursuant to the surety bond or other financial guarantee required under paragraph (2)(A). The surface owner of such lands may also bring an action in the appropriate United States district court for double damages plus costs for willful misconduct or gross negligence against any person undertaking any minerals prospecting activity on such lands in violation of any requirement of paragraph (1).

(4) PAYMENT OF DAMAGES.—The safe owner of any land subject to this subsection may petition the Secretary for payment of all or any portion of a surety bond or other financial guarantee required under paragraph (2)(A) as compensation for damages and losses referred to in paragraph (2)(A). Pursuant to such a petition, the Secretary may use such bond or other guarantee to provide compensation to the surface owner for such damages and to insure reclamation as required by this subsection.

(5) BOND RELEASE.—The Secretary shall release the surety bond or other financial guarantee required under paragraph (2)(A) upon the successful completion of all requirements pursuant to the plan approved under paragraph (2)(B) or at such earlier date as may be agreed to by the surface owner.

(6) MINERALS COVERED.—This subsection applies only to minerals not subject to disposition under the Mineral Leasing Act (30 U.S.C. 181 and following), the Geothermal Steam Act of 1970 (30 U.S.C. 100 and following), or the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following).

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